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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 2335/2024**

WASIM KHAN

.....Petitioner

Through: **Mr.U.A.Khan** and **Mr.Tushar**
Upadhyaya, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: **Ms.Meenakshi Dahiya, APP for State**
with SI Kartar Singh Rawat, P.S.
Narcotics Cell OND.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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03.09.2024

CRL.M.A. 19713/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

BAIL APPLN. 2335/2024

1. An application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been preferred on behalf of the petitioner for grant of regular bail in FIR No. 667/2023 under Sections 21 of NDPS Act registered at PS: Bhalswa Dairy. Chargesheet has been filed under Sections 21/25/29 of NDPS Act.

2. In brief, as per the case of prosecution, co-accused Asif was apprehended with 500 grams of Heroin. During interrogation, he disclosed that one Rahil and his associate Rifat Ali @ Danish had given him 1 kg of Heroin from which he supplied 500 grams to accused Babli and remaining



500 grams of Heroin was supplied to Sharifa. Asif further disclosed that Heroin was procured from Wasim (petitioner) and the same was supplied to one Seema. Thereafter, on 18.07.2023 at instance of Asif, co-accused Rifat Ali @ Danish was apprehended with 300 grams of Heroin from a car which was registered in name of Rifat Ali. It is further the case of prosecution that petitioner could not be initially arrested and surrendered only on 24.05.2024.

3. Learned counsel for petitioner submits that there is no evidence against the petitioner except the disclosure statement of co-accused.

4. On the other hand, application is opposed by learned APP for the State on the ground that petitioner is the 'source' for supply of contraband to co-accused. She further points out that petitioner could not be earlier apprehended and surrendered only after the proceedings under Section 82 Cr.P.C. were initiated against him. However, she fairly admits that though CDR records were collected but the same could not corroborate the calls during the relevant period and there is no other connecting evidence against the petitioner. Further petitioner has been chargesheeted in the present case on the ground of conspiracy.

5. This court is of the considered opinion that liberty cannot be curtailed merely on the basis of disclosure statement of co-accused, in the absence of any other corroborating evidence on record. At the stage of granting bail, a detailed examination of the evidence is not to be undertaken but the prosecution needs to establish some clinching evidence to contend that petitioner has failed to cross the embargo under Section 37 of the NDPS Act. Further, though the petitioner is stated to have been involved in another FIR, the same itself cannot be a ground to deny the bail. Chargesheet is stated to have been already filed on record and petitioner is in custody since



24.05.2024.

6. Considering the totality of facts and circumstances, since no recovery was made from the possession of the petitioner, the requirements of Section 37 of the NDPS Act are satisfied qua the petitioner and there are reasonable grounds to believe that the petitioner is not guilty of the said offence.

Accordingly, petitioner is admitted to bail on furnishing personal bond in the sum of Rs. 1,00,000/- (Rupees One Lakh only) with one surety in the like amount to the satisfaction of the learned trial court and subject to the following conditions:

- (i) Petitioner shall provide his mobile number to the Investigating Officer (IO) concerned/SHO concerned at the time of release.
- (ii) Petitioner shall surrender his passport, if any, with the Investigating Officer (IO) within three days of the release.
- (iii) Petitioner shall not indulge in any criminal activity or any illegal activities during the bail period.

Application is accordingly disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 03, 2024/v